IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 500 of 2005

Between:

Rayappati Sarita, D/o R. Venkataramana Naidu, Hindu,
R/o D.No. 22, IInd floor, R.C. Road, Tirupati, Chittoor District.

..... PETITIONER

AND

1 The Vice-Chancellor, S.V. University, Tirupati,
2 The Registrar, S.V. University, S.V. University Campus, Tirupati.
3 The Principal, S.V. University, College of Engineering, Tirupati.

(R-1 is deleted as per Court order dated 24.1.2005)

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ or direction, more particularly in the nature of writ of mandamus declaring that the action of Respondents in not permitting the Writ Petitioner to write the balance papers of 1st Semester of M. Tech. Examination and not allowing the Petitioner to attend the classes of IInd Semester and write the examinations thereafter are illegal, arbitrary, biased, discriminatory, violative of principles of natural justice and devoid of jurisdiction and pass necessary orders.

Counsel for the Petitioner:MR.K.S.GOPALA KRISHNAN

Counsel for the Respondents: MR.P.S.NAIDU

The Court made the following :

ORDER:

Petitioner, a student of M.Tech filed this writ petition questioning the action of the respondents in not permitting her to appear for the 1st Semester Examination and in not allowing her to attend the classes of IInd Semester. Her case, in brief, is that she joined M.Tech course (Civil- Environmental Science) in S.V. University, Tirupathi during academic year 2004-05 and was attending the classes regularly and stood first in the internal examination. She paid fees for the first semester examination and was issued a Hall Ticket No.1104210 permitting her to appear for the first semester examination and appeared the first examination paper of Advanced Engineering Mathematics on 27.12.2004, but was refused permission to appear for the second paper (Environmental Chemistry) on the ground of shortage of attendance of special classes and her Hall Ticket was taken away forcibly in spite of her protest. She attended all the regular classes but was not aware of holding of any special classes, which to her knowledge, were never conducted. Thus respondents refusing to permit her appearing for the first semester examinations in full and for the second semester classes is without any valid reason, and is against principles of natural justice.

2. The contention of the learned counsel for the petitioner is that in view of ratio laid down in **M.S.Chakravarthy Vs. Prl. Sreekalahasteeswara Institute of Technology** and **Shri Krishan Vs. Kurukshetra University,** petitioner is entitled to appear for the examination and in any event since the first semester examinations are over, she may be permitted to attend the classes for second semester with liberty to complete the first semester examination also along with second semester examination.

3. The contention of the learned Standing counsel for the respondents is that as per the regulations governing M.Tech four semester degree course, framed by the S.V.University average attendance of 75% in all the subjects in a semester is essential, and candidates who do not satisfy the requirement of attendance have to repeat that semester, as and when offered and would not be permitted to go to the next semester unless they satisfy the requirements of attendance in any semester,

and since there is no question of condonation of the minimum percentage of attendance and since petitioner did not fulfill the requirement of 75% attendance, she was not permitted to appear for the second examination in the first semester.

4. As per Section 55 of Andhra Pradesh Universities Act, 1991, which governs S.V.University also (in which the petitioner is studying) the academic senate shall have the power to make regulations inter alia prescribing the conditions on which students shall be admitted to examination for the degrees, diplomas, certificates and titles of the university etc. In exercise of that power regulations governing the M.Tech, four semester course were framed by the S.V.University, as per which minimum average attendance of 75% in all the subjects in the semester, besides a minimum of 60% of attendance in each of the subjects is essential for a candidate being permitted to appear for the examination. A candidate who does not satisfy the above requirements of attendance has to repeat that semester as and when offered, and would not be permitted to go to the next semester unless he/she satisfies the requirements of attendance in any semester. Thus, it is clear that 75% average attendance in a semester is a must and is a condition precedent for a student to be admitted to examination, at the end of the semester.

5 . M.S.Chakravarthy case (1 supra) relied on by the learned counsel for the petitioner has no application to the facts of this case, because, that case relates to a student from Jawaharlal Nehru Technological University, which has its own regulations and is governed by Jawaharlal Nehru Technological University Act, 1972. From the said decision, it is seen that the regulations framed by Jawaharlal Nehru Technological University empower the Vice Chancellor to condone shortage of attendance upto 10%. There is no such regulation in the regulations framed by the S.V.University governing M.Tech four semester course, of which the petitioner is a student.

6. Relying on the observations in Sri Krishan case (2 supra), learned counsel for the petitioner contends that since the petitioner was permitted to appear for the first examination of the first semester, the conduct of the respondents in not permitting the petitioner to appear for the second examination is improper. The facts in that

case are entirely different from the facts of this case. The facts in that case disclose that Sri Krishan, a Teacher in Government High School, joined L.L.B some time in the year 1971 and appeared for the annual examination of Part I in April 1972, but failed in three subjects. Subsequently, he was promoted to Part II and appeared for the Part II examination in April, 1973 and applied for his Roll Number in order to reappear for the subjects which he had failed earlier and to clear them. In the meanwhile, he gave an undertaking that in case he is unable to get permission from the employer, which is mandatory in case of employees studying in law college, he would abide by any order that the university may pass and on the basis of the said undertaking, he is allowed to appear for Part II examination in May, 1973. In June, 1973, he was informed that his candidature stood cancelled and so he approached the High Court questioning the said cancellation. When the High Court dismissed the petition, he approached the Supreme Court. Referring to the Statute of the University, the Apex Court held that

> "the last part of this Statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear……. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinize the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law…….. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the university authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April, 1972, then by force of University Statute the university has no power to withdraw the candidature of the appellant.

7. Since petitioner, admittedly, was not permitted to appear for all the examinations, there cannot be any estoppel against the respondent. No doubt, petitioner claims that she was issued a Hall Ticket, and that it was forcibly withdrawn from her and that she was not permitted to appear for the second examination. It is also her contention that she attended all the classes and did not attend special classes. Question whether the petitioner attended all classes or not, and whether special classes were conducted and if petitioner had no knowledge of those classes or not, are all pure questions of fact, which cannot be decided by this Court. Even according to the averments in the affidavit of the petitioner, the case of the respondents is that she has fallen short in the requisite attendance and had only 68.3% attendance. Since the regulations framed by S.V.University contemplate 75% attendance as mandatory for permitting a student to appear for the examinations and when there is no provision for condonation, question of permitting the petitioner to appear for the second examination or permitting her to appear for the second semester does not arise and so the action of the respondents in not permitting the petitioner to appear for the second examination and second semester cannot be said to be illegal or without valid reasons and so I find no merit in this petition. Therefore, the writ petition is dismissed. No costs.

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C.Y.SOMAYAJULU, J

Dated: 10.03.2005

Note:- Issue C.C in 2 days

(B/o)

RAR

To

1 The Registrar, S.V. University, S.V. University Campus, Tirupati.
2 The Principal, S.V. University, College of Engineering, Tirupati.

3 2 CD copies.